IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.21681 of 1999

Between:

1 Puli Meeraiah S/o.Chinna Yelamanda
Ammagaripalem (V) Kavali Rural (M)
Nellore Dist.
2 Puli Venkateswarlu s/o.Yadaiah
Ammagaripalem (V) Kavali Rural (M)
Nellore Dist.
3 Golla Venkateswarlu S/o.Somaiah
Ammagaripalem (V) Kavali Rural (M)
Nellore Dist.

..... PETITIONERS

AND

1 The District Collector, Nellore District
2 The Executive Engineer, Panchayat Raj Department,
Nellore District.
3 The Secretary,
Kavali Agricultural Market Committee, Kavali,Nellore District.
4 Avula Ankaiah, S/o. China Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District.
5 Avula Ankaiah, S/o. 5th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
6 Mamidi Venkata Ramanaiah, S/o. Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
7 Mamidi Veera Bhadraiah, S/o. Tirupalu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
8 Mamidi Bangaraiah, S/o. Somaiah,

R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

9 Avula Bangaru Chetti, S/o. 2nd Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

10 Avula Jayaramaiah, S/o. 5th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

11 Avula Kondaiah, S/o. 5th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

12 Mamidi Venkateswarlu, S/o. Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

13 Mamidi Govindu,, S/o. Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

14 Kondur Sreenu, S/o.Masthan,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

15 Avula Nageswara Rao, S/o. Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

16 Chenchugari Kondaiah, S/o. Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

17 Mamidi Babu, S/o.Jalaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

18 Mamidi Polaiah, S/o.Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

19 Mamidi Ramesh, S/o. Bangaraiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

20 Kalinji Venkateswarlu, S/o.Pedda Venkateswarlu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

21 Avula Subba Rayudu, S/o. China Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

22 Mamidi Tirupalu, S/o.Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

23 Chenchugari Subbaiah, S/o.Venkateswarlu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

24 Chenchugari Chittibabu, S/o.Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

25 Avula Tataiah, S/o. 4th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District.

26 Avula Pedda Ankaiah, S/o. 2nd Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
27 Avula Ankaiah, S/o. Ankaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District.
28 Avula Lakshmaiah, S/o. 5th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
29 Avula 2nd Subbaiah, S/o. 2nd Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
30 Avula Kondaiah, S/o. 4th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
31 Avula 4th Subbaiah, S/o. Ankaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
32 Avula Nageswara Rao S/o. 5th Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
33 Avula 5th Subbaiah S/o. Ankaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
34 Chenchugari Lakshmaiah S/o.Chetti,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
35 Avula Pedda Kondaiah S/o. Pedda Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
36 Mamidi Jalaiah S/o.Tathaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
37 Chenchugari Pothaiah S/o.Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
38 Avula Subbarayudu S/o. Subbaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
39 Mamidi Venkateswarlu S/o.Bangaraiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
40 Pralayakaveri Rosaiah S/o.Sreeramulu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
41 Mamidi Sivaramaiah S/o.Tirupalu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
42 Avula Subramanyam S/o.Bangaru Chetti,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
43 Mamidi Tathaiah S/o. Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,

Nellore District
44 Chenchamgari Pothu Raju S/o.Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
45 Chenchamgari Kondaiah S/o.Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
46 Pralayakaveri Venkateswarlu S/o.Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
47 Chenchamgari Tathaiah S/o. Yanadhi,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
48 Konduru Venkateswarlu S/o.Govindaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
49 Konduru Venkateswarlu S/o.Somaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
50 Chenchamgari Bangaru Chetti S/o. Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
51 Pralayakaveri Venkateswarlu S/o. Sreeramulu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
52 Chenchamgari Pothaiah S/o.Kondaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
53 Avula Nageswara Rao S/o.Bangaraiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
54 Mamidi Govindu S/o. Tathaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
55 Chenchamgari Kondaiah S/o. Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
56 Chenchamgari Yanadhi S/o.China Pothaiah,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
57 Chenchamgari Ramanaiah S/o.Venkateswarlu,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District
58 Chenchamgari Govindaiah S/o. Chetty,
R/o.Lakshmipuram Village, Annagaripalem Panchayat,
Nellore District

(Respondents-4 to 58 are impleaded as per Court order dated 23.12.2003 in WPMP No.32592 of 2003)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents 2 and 3 in proposing to lay any Land Acquisition proceedings which is illegal, arbitrary and violative of principles of Natural Justice and also violative of Articles 14,19, and 31 of the Constitution of India, and pass such other order or orders.

Counsel for the Petitioners: MR.UNNAM MURALIDHAR RAO

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for the Respondent Nos.4 to 58: Mr. P. KRISHNA REDDY

The Court made the following:

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ORDER:

The petitioners herein seek a writ of mandamus declaring the action of the Executive Engineer, Prnachayat Raj Department and the Secretary of Kavali Agricultural Market Committee, Kavali in proposing to lay the road through the petitioners' land without following the procedure contemplated under Land Acquisition Act, 1894 as

illegal and arbitrary. It is the case of the petitioners-1 and 2 that they own lands in Survey Nos.17-B and 19-B, that the third petitioner owns land in Survey No.2173-2, that they have obtained pattadar passbooks and in possession of the property. It is their further case that the third respondent proposed to lay the road from Z.P.P. road, Chippaleru to Lakshmipuram, which is to be laid through the lands of the petitioners. As no acquisition proceedings are initiated and the respondents-1 and 3 are proceeding with the work, presumably treating the land on which road is to be laid as Government land (cart track), the petitioners filed the present writ petition.

The respondents-1 and 3 have filed counter affidavits. The respondents-4 to 58, who claim to be fishermen of Lakshmipuram village, using the cart track passing through the petitioners' land since time immemorial were impleaded subsequently. When the matter came before this Court on 23.12.2003, this Court passed orders in WPMP No.27134 of 1999 and WVMP No.4019 of 2003 observing that if the cart track is there in the petitioners' land, the petitioners shall not obstruct the same and this Court also restrained the respondents from laying any further road, covering the area passing through the land in Survey No.17, till the disposal of the writ petition. Again when the matter was listed before this Court on 3.8.2004, the District Collector was directed to file an affidavit. In view of the affidavit, it is not necessary to refer the counter affidavits filed by the respondents-2 and 3 as well as the counter affidavit filed by Respondents-4 to 58.

In the affidavit sworn on 10.8.2004, the District Collector in paragraph-7 states as under:

I further submit that Survey No.17 is a patta dry land under patta No.660 measuring Acs.5.96 cents and as per Adangal Sri Puli Venkatesh ie., Petitioner No.2 herein is enjoying Ac.1.48, Sri Meeraiah i.e., 1st petitioner herein is enjoying Ac.0-48 cents and Puli Sudhakar Ac.1.00 and Sri Subba Reddy Acs.3.00. There is doruvu (water storage tank) and plan marked cart tract in Survey No.17.

The above averment would show that i) the land in Survey No.17 is patta land; ii) the land admeasuring Ac.0.48 cents belongs to petitioner No.1, land admeasuring Ac.1.48 cents belongs to petitioner No.2 and the land admeasuring Ac.1.00 and Acs.3.00 belonged to one Puli Sudhakar and Subba Reddy both of them are not parties to this writ petition; and iii) there is a doruvu (water storage tank) and cart track in Survey No.17. Along with this counter affidavit, the village map of Tummalapenta is also annexed, which indeed shows that there is a cart track passing through Survey No.17 from north to south towards Juvvaladinne. Reliance is also placed by the District Collector on Chapter VII of A.P. Survey Department Rules, which contains principles of Field Survey regarding demarcation of footpaths and cart tracks. The relevant paragraph dealing with cart tracks reads as under:

Cart tracks:- Where a cart tract is indicated in any old document or record, the maximum extent of 10 feet width (3.04 meters) shall be indicated as a cart track in the survey record. A distinct indication should be made between a footpath and a cart track. If the cart track passes entirely through the field of a single owner that owner has to leave the entire cart track of 10 feet width; (3.04 meters). In case it passes between the fields of two different owners each owner has to leave five feet width (1.5 meters) for purposes of cart tract.

While surveying, whenever the old documents indicate a footpath or a cart tract, in the survey records distinct indicate for a footpath or a cart track may be made. In some of the old documents it is customary to merely mention about the footpath or cart tract running through a field without specifying its width. In all such cases, the width that should be taken by the surveyors is four feet (1.21 meters) in the case of a footpath and 10 feet (3.04 meters) in the case of a cart track. This is the established rule in the field survey demarcation and measurements.

Even according to the Survey manual, when there is cart track indicated in any old record, a distinct indication should be made between a footpath and a cart track. However, after perusing the map annexed to the counter affidavit, prima facie, this Court is not able to arrive at a conclusion whether the said map was prepared in accordance with the Survey Rules governing the demarcation of footpaths and cart tracks. Further, the entire record especially the village map of the surrounding villages is not before this Court to come to a conclusion as to whether there is a cart track. Therefore, it would be the interest of the petitioners as well as the respondents-4 to 58, if a survey is ordered by the District Collector by the Department of Survey in the presence of the petitioners-1 and 2 and respondents-4 to 58 or their representatives. If, in the survey, it is proved that there is an existing cart track, it shall be open to the respondents 1 to 3 to proceed with further steps to lay the pakka road. If it is proved otherwise, it shall be open to the respondents to acquire the land for the purpose of laying the road. In either case, as ordered by this Court earlier in its order dated 23.12.2003, if the respondents 4 to 58 regularly use foot path for carrying their daily chores, petitioners herein shall not in any manner interfere with the use of cart track. The District Collector shall complete exercise as ordered herein above within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition, with the above observations and directions, is disposed of.

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September 7, 2004. (**V.V.S. RAO, J**)

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ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The District Collector, Nellore District
2 The Executive Engineer, Panchayat Raj Department,
Nellore District.
3 The Secretary, Kavali Agricultural Market Committee,

Kavali,Nellore District.
4 Two CCs to the Government Pleader for Panchayat Raj and

Rural Development, High Court of A.P., Hyderabad (O.U.T)

5 Two CD copies.